

Q. Will there be a requirement for a formal verbal presentation?

A. No. There is no presentation component, however a site visit of your office location may be requested. (See RFP 1.12)

Q. Would the relationship while providing services pursuant to this RFP be considered the traditional lawyer-client relationship?

A. By law the Attorney General serves as legal counsel for all legal matters involving the State or any State Agency. In matters that would be covered under this agreement, the firm would be responsible for representing the interests of both the state agency or agencies that are named in the tort action, as well as the Office of Attorney General ("OAG") in relation to its statutory duties and obligations. Maintenance of client confidences with respect to the OAG and any affected state agencies is expected at all times, as appropriate. The OAG expects to receive timely case status reports, responses, professional assessments, and updates regarding the tort cases and matters handled pursuant to the RFP, and the OAG expects counsel to communicate with affected agencies to gather necessary information as part of the defense of the matter and to obtain necessary input and provide status updates. All approvals for settlement authority and appeal must come from the OAG, in addition to Governor approval pursuant to statute and any necessary consultation with affected agencies, subject to any approval thresholds that are established in writing by the OAG and Governor.

Q. Will outside counsel be brought in to give advice on a tort claim notice?

A. The OAG Investigations Division handles on average between 4,000 and 5,000 Notices of Tort Claim annually for the State. As part of those responsibilities, OAG staff will regularly contact our outside counsel firm to discuss cases that are likely going to be litigated. They may also reach out seeking advice on valuation of a case or assessment of negligence or available defenses by the State. In less frequent circumstances we will call in outside counsel to discuss preservation of evidence issues, and other considerations for investigators as they handle a tort claim review.

Q. How will the State view actual or potential conflicts of interest or adverse interests to the State?

A. We welcome your bid regardless of pre-existing conflicts, however we require that you address any potential barriers to representing the State up front in your response. (See RFP 2.4.4 and paragraph 10 of Attachment A.) We would also ask for a plan as to how you will address any conflicts. The OAG recognizes that due to the size and scope of state government, many lawyers and firms will have pre-existing or future clients who would have interests adverse to the State. However, we do not want to be in a situation where we are frequently having to review actual or potential conflicts to determine if waivers are necessary or appropriate or if the adverse representation calls in to question the ability of counsel to adequately represent the interests of the State pursuant to this RFP. The State reserves the right to request an alternative approach than presented and may take this into account in the final award of a contract.

Q. Will there be tort cases involving Pro Se litigants?

A. It is estimated that at any given time between 15-25 of open tort cases will involve *pro se* litigants.

Q. What are the most common agencies I will be representing?

The following case data is taken from tort cases filed in calendar year 2016 and still pending at the end of 2016 and shows the seven state agencies with the highest number of tort cases, listed in descending order. By far the most cases are received from the Indiana Department of Transportation (INDOT), with the case totals doubling the total of all the other agencies below.

	<u>New in 2016</u>	<u>Total at end of 2016</u>
1. Department of Transportation	74	135
2. Department of Correction	21	51
3. Indiana State Police	8	22
4. Department of Natural Resources	4	10
5. Department of Child Services	4	7
6. Family and Social Services Administration	2	5
7. Bureau of Motor Vehicles	3	4

Q. There has been discussion of a possible regional approach to engaging counsel under this RFP. Will you make the determination at the end of the process or should I address that in my response?

A. We would like for you to present whatever approach you feel would allow you to provide the best services to the State. If that is through a regional approach, please provide why you would be valuable in handling a particular region or section of the State. The State reserves the right to make the final determination.

Q. How many cases go to trial every year?

In 2016, there was one jury trial and one bench trial, in addition to five small claims court trials. Trial statistics are affected by a number of factors, including goals and preferences of the State.

Q. What is the State's expectation of reporting during the extent of the contract?

The OAG expects to receive timely case status reports, responses, professional assessments, and updates regarding the cases and matters handled pursuant to the RFP, and the OAG expects counsel to communicate with affected agencies to gather necessary information as part of the defense of the matter and to obtain necessary input and provide status updates. All approvals for settlement authority and appeal must come from the OAG, in addition to Governor approval pursuant to statute and any necessary consultation with affected agencies, subject to any approval thresholds that are established in writing by the OAG and Governor.

Additionally, depending on the pricing/billing model, it may be necessary to reflect case status for each ongoing matter in regular invoices issued to the State.

Q. What is your current case management system and how does that integrate with reporting expectations?

Currently the OAG uses the Lexis Nexis product Time Matters. We are in the process of migrating to a Salesforce case management system and anticipate that it will be fully implemented in the first or second quarter of 2018. We plan to make available permissions-based access to the case management

system for the firm or firms selected under this RFP to enter appropriate case development information and to store case-related documents.

Q. How long is a file typically open?

For the tort cases closed in calendar year 2016, the average number of months that the case was pending was 26, and the median of the same dataset was 18 months. If the 10 shortest timeframes and 10 longest timeframes were excluded as potential outliers, the average number of months that the litigation matter was pending was 23 months.

Additionally, it should be noted that in some instances tort cases may remain open but not incur costs for the State under the current per-case, per-month billing model, including situations where insurers accept defense and judgment/settlement obligations on behalf of the State, and situations where matters are taken up on appeal and handled by OAG in-house attorneys during the pendency of the appeal.

Q. How many tort cases are closed within six (6) months of initial referral?

Of tort cases closed in calendar year 2016, 21 were closed within six months of initial referral.

Q. Can I submit my own proposal and a proposal partnering with another law firm?

Please see RFP 1.6.

Q. What level of work-up does Attorney General staff conduct on each Notice of Tort Claim?

OAG staff reviews all Notices of Tort Claim and conducts an initial assessment as to whether negligence on the part of the affected state agency is preliminarily indicated. Further investigation of the facts and circumstances, including review of associated documents, interviews with knowledgeable individuals, and inspections of the relevant premises or facilities is conducted as necessary to inform a decision within the statutory timeframe for approving or denying the claim. For tort cases that proceed to litigation, file summaries and supporting documentation and evidentiary material that has been gathered is promptly made available for use in the case defense. Additionally, OAG staff members who handled the initial file review are available for consultation with outside tort counsel if needed.

Q. Will greater importance be placed on minimizing settlement and verdict amounts, or keeping defense costs predictable?

The OAG is looking for counsel to provide services that are cost-efficient for the State of Indiana. Similar to how the OAG handles civil cases assigned in-house, we want to strike a balance between demonstrating willingness and ability to try tort cases and to deter nuisance suits and pursuit of associated settlements, while also appropriately assessing risk and considering settlement and minimizing financial exposure where appropriate. Additionally, Ind. Code § 34-13-3-24 provides that there is an appropriation from the State General Fund sufficient to settle claims and satisfy tort judgments against the State, as well as expenses incurring in relation to handling matters in this context. The State needs to be able to anticipate, within a particular range, what its likely financial exposure is for planning purposes and to maintain sufficient reserves, appreciating that litigation involves numerous variables.

To the extent that counsel can articulate why its suggested framework would provide reliable defense cost forecasts and estimates, those explanations will be helpful in reviewing options and making determinations about cost effectiveness for the State. See RFP 2.4.2 for additional information about what is expected in the Technical Proposal.

Q. How much was paid per year to outside counsel under the existing contract?

The average annual amount paid to counsel over the past two fiscal years was \$1,160,016.53.

Q. What is the numerical breakdown by county of OAG tort litigation cases handled in 2016?

The following case data is taken from new tort cases opened in calendar year 2016 listed in descending order. Although we have cases from almost every county in Indiana, we have included the top 11 counties by volume.

1. Marion	30
2. Lake	14
3. Tippecanoe	7
4T. Porter	6
4T. Vigo	6
6. Cass	5
7T. Miami	4
7T. Sullivan	4
9T. St. Joseph	3
9T. Wayne	3
9T. LaPorte	3

Q. Approximately how many active files will transfer to the selected Respondents?

A sampling of tort case data has been provided on the RFP website showing total cases open at the beginning of 2016, new cases opened during 2016, cases closed during 2016, and total cases open at the end of 2016. All tort cases pending at the time of contract commencement are eligible to be distributed to the firm or firms that are ultimately selected pursuant to the RFP. Precise distribution determinations will depend on a number of factors.